IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 4TH AUGUST 2006 / 13TH SRAVANA 1928

CRL.A.No. 216 of 2003()

ST.100/2000 of CHIEF JUDICIAL MAGISTRATE, ALAPPUZHA

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APPELLANT(S): COMPLAINANT:

A.B. SIDHARDHAN, AGED 52 YEARS,
S/O. BAVA, ANCHU THAYYIL HOUSE,
THUMPOLY P.O., ALAPPUZHA.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENT(S): ACCUSED & STATE:

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1. V.N. LALIMON @ LALACHAN,
S/O. NANAPPAN, VADAKKEVELIYIL VEEDU,
KATTOOR P.O., KALAVOOR, ALAPPUZHA.

2. STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM.

BY ADV. SRI.V.RAJENDRAN FOR R1

BY PUBLIC PROSECUTOR SMT.RAZIYA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/08/2003, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. HEMA, J.

Crl. Appeal. No. 216 of 2003

Dated this 4th day of August, 2006.

JUDGMENT

This appeal is filed against the order of acquittal passed under Section 256(1) of the Code of Criminal Procedure. The appellant is the complainant who field a complaint against the first respondent alleging offence under Section 138 of the Negotiable Instruments Act. On the date on which the case was posted for evidence, the complainant was absent. But he applied for excusing his absence. The said application was rejected and the accused was acquitted under Section 256(1) of the Code of Criminal Procedure. The said order is under challenge in this appeal.

2. Learned counsel appearing for the appellant submitted that the complainant could not appear in court due to reasons beyond his control. He was absent, since he was laid up. He had filed an application to excuse his absence and for adjournment of the case. But the court was not pleased to allow this application. Hence, the accused was acquitted. He submitted that an

opportunity may be given to the appellant to prosecute the case.

3. On going through the order under challenge, it is clear that the accused was acquitted on the day on which the case was posted for evidence. But a reading of Section 256(1) of the Code will show that the Magistrate can acquit the accused only at the initial stage of the proceedings as stated in the Section. The non-appearance of the complainant becomes fatal and it leads to an acquittal only if the complainant is absent on the date appointed for appearance of the accused, if summons is issued or any date subsequent “thereto”, to which the case was adjourned for “hearing”.

4. The day to which case is posted for evidence does not come within the purview of Section 256(1) of the Code. The court can acquit the accused under Section 256(1) of the Code only on the day of first appearance of the accused under Section 251 of Cr.P.C. or on the subsequent date to which the case is posted for hearing as provided in Section 254 of the Cr.P.C. The day on which the accused was acquitted is neither of these days. If the Magistrate is not able to proceed with the case for non production of evidence, the course left to him is not acquittal under Section 256(1) of the Code. In the above circumstances, the order under challenge is not sustainable.

In the above circumstances, I am satisfied that the order under challenge is liable to be set aside and I do so. Lower court is directed to take the case S.T.No.100/2000 on file and dispose of the case in accordance with law. Parties shall appear before the court on receipt of notice to their respective counsel from the trial court.

This appeal is allowed.

K. HEMA, JUDGE.

Krs.

K. HEMA, J.

Crl. Appeal. No. 216 of 2003

Dated this 4th day of August, 2009.

JUDGMENT